

## **Surplus Lines Insurance: Policy Form Approval Procedures and Standards**

### 11:1-33.1 Purpose and scope

(a) These rules establish procedures and standards for the acceptance or disapproval of policy forms submitted by surplus lines agents in accordance with the Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq. Nothing in these rules shall authorize the acceptance or use, or prohibit the disapproval, of a policy form that is otherwise prohibited by another law or rule.

(b) These rules also set forth procedures for the procurement of insurance from surplus lines insurers and ineligible unauthorized insurers in accordance with N.J.S.A. 17:22-6.43, 6.45 and 6.47.

(c) These rules apply to all New Jersey licensed insurance producers, including those with surplus lines authority who file policy forms pursuant to N.J.S.A. 17:22-6.43(c), on behalf of surplus lines insurers.

(d) These rules apply to surplus lines insurers and ineligible unauthorized insurers in accordance with N.J.S.A. 17:22-6.45(i).

### 11:1-32.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Authorized insurer" means a domestic, foreign or alien insurer duly authorized by a Certificate of Authority issued by the Commissioner of the Department of Banking and Insurance of the State of New Jersey to transact the business of insurance in this State.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Diligent effort" means a process by which a licensed New Jersey insurance producer places coverage on behalf of a New Jersey insured with a surplus lines insurer after the risk has been declined by three authorized insurers, each of which is authorized in New Jersey to write insurance of the kind requested and is an insurer that the producer has a good faith reason to believe might consider writing the type of coverage or class of insurance involved.

"Export" or "exported" means to place with a surplus lines insurer pursuant to the New Jersey Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq., insurance covering all or part of a subject of insurance resident, located, or to be performed in New Jersey.

"Exportable list" means a list of any class or classes of insurance coverages or risks declared and promulgated by the Commissioner pursuant to N.J.A.C. 11:1-34 for which there is no reasonable or adequate market among authorized insurers in this State.

"Ineligible unauthorized insurer" means a foreign or alien insurer that is not duly authorized to transact business in this State by a current certificate of authority issued pursuant to the laws of this State and is not a surplus lines insurer.

"Policy," "policy forms," "insurance policy" or "contract" includes all forms, endorsements, exclusions and limitations.

"Producer" means a person engaged in the business of an insurance agent, insurance broker or insurance consultant pursuant to N.J.S.A. 17:22A-1 et seq., who is licensed pursuant to N.J.S.A. 17:22A-1 et seq., and who has property casualty authority.

"SLEO" means the Surplus Lines Examining Office.

"Surplus lines agent" means a person licensed pursuant to N.J.S.A. 17:22A-1 et seq. and N.J.A.C. 11:17 with the authority to place insurance coverages on behalf of surplus lines insurers.

"Surplus lines insurer" means a foreign or alien insurer that is eligible to transact surplus lines business in this State, pursuant to N.J.S.A. 17:22- 6.40 and N.J.A.C. 11:1-31.

#### 11:1-33.3 Policy form filings

(a) A surplus lines agent may not use a policy form or contract in the nonadmitted market unless such form or contract has been filed with the Commissioner in accordance with the requirements of this subchapter or is exempt from form filing requirements as provided in (b) through (d) below.

(b) A surplus lines agent may export coverage to a surplus lines insurer, without making any filing pursuant to this subchapter if the policy form or contract contains substantially the same terms and conditions that are currently filed by and in use by an authorized insurer for the same line or lines of insurance.

(c) A surplus lines agent may export coverage to a surplus lines insurer, without making any filing pursuant to this subchapter covering solely special risks pursuant to N.J.S.A. 17:29AA-3(k), except for those risks that are deemed special risks solely because their premium is \$10,000 or greater. A surplus lines agent may also export coverage to an eligible surplus lines insurer covering associated commercial general liability and commercial property coverages exported pursuant to N.J.S.A. 17:22-6.43(a) without making a form or contract filing with the Commissioner, but only if the unprocured coverage which forms the basis for export of the associated commercial general liability or associated commercial property coverage pursuant to said subsection appears on the exportable list.

(d) A surplus lines agent may export coverage to a surplus lines insurer without making any additional filing pursuant to this subchapter, if the policy form or contract has been previously filed on behalf of an insurer and not disapproved by the Commissioner for use in the surplus lines market, provided that the forms were filed in accordance with this subchapter.

#### 11:1-33.4 Policy form standards

(a) Surplus lines agents on behalf of surplus lines insurers may file with the Commissioner policy forms that modify the coverage provided for forms approved in the admitted market if the modification meets one of the following criteria:

1. The modification is reasonable given consideration to past and prospective loss experience of the risk or risks to be insured and the modification facilitates the availability of coverage for such risk or risks, which coverage would otherwise not be available at a reasonable cost. In determining whether this criterion has been met, the Commissioner shall also consider:

i. Whether the particular insured or the line or lines of insurance to be covered under the modified form or contract presents past loss experience such that it is unlikely that the insured will be able to procure affordable coverage under policy forms or contracts previously approved for use in the admitted market; and

ii. Whether the particular insured or the lines of insurance to be covered under the modified form presents future loss exposures such that it is unlikely that the insured will be able to procure affordable coverage under policy forms or contracts approved for use in the admitted market; or

2. The modification renders the form unique and designed for use with respect to a particular subject of insurance (that is, a single insured).

(b) Filings shall be accompanied by the Filing Questionnaire incorporated herein by reference as Exhibit A in the Appendix to this subchapter, and shall meet the following requirements:

1. The filing shall include a listing of all forms that comprise a single filing; and
2. The filing shall include two copies of the modified form and/or contract.

(c) In order for the Commissioner to adequately evaluate each such filing, no more than 10 forms shall be filed by an organization or single surplus lines agent who is a corporate officer or an employee within any 30 day period. Surplus lines insurers newly deemed eligible and currently eligible surplus lines insurers introducing a new line of coverage in this State may request a waiver from this provision in writing to the Department's Property Casualty Office at the address in (d) below. The request should include the reason why a waiver should be granted and the approximate number of forms the company wishes to file. The Department may condition the granting of any such waiver on the insurer's agreement to extend the 30 day period specified in (e) below.

(d) The modified forms shall be filed not less than 30 days before the effective date of the modified form and the surplus lines agent shall submit the policy form to the:

Property Casualty Office  
New Jersey Department of Banking and Insurance  
Attn: Surplus Lines Filings  
20 West State Street  
PO Box 325  
Trenton, New Jersey 08625-0325

(e) If the Commissioner fails to disapprove the use of a modified form or contract within 30 days of its being received by the Department, it shall be deemed approved. However, nothing in this subchapter precludes the Commissioner from subsequently disapproving modified forms or contracts from future use should the Commissioner conclude, after notice and an opportunity for interested parties to be heard at the Annual Exportable List Hearing, that continued use of the modified form or contract is no longer appropriate under the standards set forth in this subchapter.

#### 11:1-33.5 Exclusions

(a) No form or contract required to be filed pursuant to N.J.A.C. 11:1-33.3 shall contain provisions excluding or limiting coverage for any injury caused either directly or indirectly in whole or in part by:

1. Sexual abuse (except for tattoo parlors; half-way houses; schools; boarding schools; summer camps; athletic leagues for children; and alcohol and drug rehabilitation centers);
2. Communicable disease (except for tattoo parlors; half-way houses; schools; boarding schools; summer camps; athletic leagues for children; and alcohol and drug rehabilitation centers); or
3. Lead paint or lead contamination except as provided in N.J.A.C. 11:13- 7.4.

(b) No form or contract required to be filed pursuant to N.J.A.C. 11:1-33.3 above shall contain:

1. Claims made forms for habitational policies; or
2. Defense costs within policy limits, deductibles or self-insured retention (except lawyers professional; physician liability coverages; and liability coverage for environmental contractors removing asbestos and other pollutants from contaminated properties).

#### 11:1-33.6 List of disapproved or withdrawn forms or contracts; exportable list hearing

(a) The Department shall maintain a list of modified policy forms or contracts that have been filed in

accordance with this subchapter and subsequently disapproved or withdrawn since the last Exportable List hearing was held. The list of modified policy forms or contracts that have been disapproved or withdrawn shall be made available upon request made to the Department's Property Casualty Office and payment of copying charges pursuant to N.J.A.C. 11:1-32.4(b)7.

(b) Any policy forms or contracts that have been disapproved or withdrawn by the Commissioner pursuant to N.J.A.C. 11:1-33.4 shall be identified on a yearly basis in the Exportable List Hearing Notice. Interested parties will have the opportunity to present relevant information at the hearing for the Commissioner's consideration.

#### 11:1-33.7 Refiling policy forms

(a) Surplus lines insurers issuing or renewing policy forms containing provisions inconsistent with the standards set forth in this subchapter or N.J.S.A. 17:2-6.43(c) shall amend those forms and refile them in accordance with the procedures in this subchapter.

(b) Policy forms refiled in accordance with this section shall, in addition to the completed Surplus Lines Policy Form Filing Questionnaire, be accompanied by a certification of a surplus lines agent stating that the policy form is being refiled in accordance with the standards set forth in this subchapter. Policy forms must be refiled April 21, 2003 in order to be effective no later than May 21, 2003.

#### 11:1-33.8 Surplus lines insurance coverage procurement requirements

(a) Except for coverages on the Exportable List, any licensed New Jersey insurance producer who may be placing coverage on behalf of a New Jersey insured shall first make a diligent effort to place the coverage with an authorized insurer. Only that coverage not so procurable from an authorized insurer may be placed with a surplus lines insurer, provided, however, that if the unprocurable coverage appears on the Exportable List, the associated commercial general liability and commercial property coverages may be exported along with the unprocurable coverage.

1. If a licensed producer has a bona fide written renewal quote or coverage exists from an authorized insurer for any class or risk that is on the exportable list and that coverage is placed in the surplus lines market, the surplus lines agent shall stamp the policy as "Exportable."

2. The surplus lines agent shall maintain the records of each surplus lines contract and shall make these records available for inspection by the Commissioner for a period of at least five years.

(b) When coverage on behalf of a New Jersey insured cannot be placed with an authorized insurer pursuant to (a) above, a New Jersey licensed surplus lines agent may place the coverage with an ineligible unauthorized insurer. Procurement of insurance from an ineligible unauthorized insurer may be made only when it is not otherwise procurable from admitted insurers or a surplus lines insurer and only if the expressed conditions in (b)1 through 5 below are fully satisfied at least five working days prior to the binding of insurance coverage.

1. The producer shall complete form SLPS-6 CERT1, incorporated herein by reference as Exhibit B in the Appendix to this subchapter, file it with the surplus lines agent and retain a copy.

2. The surplus lines agent shall complete form SLPS-8 AFF3 Supplemental Certification, incorporated herein by reference as Exhibit C in the Appendix to this subchapter, and attach form SLPS-6 CERT1 from the producer pursuant to (b)1 above.

3. The ineligible unauthorized insurer shall have made a deposit or deposits with the Commissioner as follows:

i. The amount of the deposit must be 125 percent of expected losses, but not less than \$100,000, in United States Government Bonds pursuant to the instructions set forth in N.J.A.C. 11:2-32, including all

supporting documents and calculations used to determine the amount of the deposit; and

ii. The deposit set forth in (b)3i above shall be separately made for each individual policy; in the case of a group or plan of insurance, a deposit shall be separately made for each individual New Jersey citizen or resident who is insured through such policy or plan or who has received a certificate or other evidence of coverage under such policy or plan; and

iii. Upon good cause shown, the amount of the deposit provided in (b)3i above shall be reduced or waived, in the Commissioner's discretion. A showing of good cause requires:

- (1) A rating in one of the four highest rating categories from a company listed in N.J.A.C. 11:1-41.3; except that a Weiss Rating must be in its highest category;
- (2) Domicile in a National Association of Insurance Commissioners (NAIC) accredited jurisdiction; and
- (3) No more than five new or renewal placements per year.

4. The surplus lines agent shall file a certified copy of the ineligible unauthorized insurer's annual statement of financial condition, current as of the date of filing, which evidences net assets of at least \$5,000,000, consisting of at least \$1,500,000 liquid assets with:

Surplus Lines Examining Office (SLEO)  
New Jersey Department of Insurance  
20 West State Street  
PO Box 325  
Trenton, New Jersey 08625-0325

5. The surplus lines agent shall maintain the records of each placement with an ineligible unauthorized insurer and shall make these records available for inspection by the Commissioner for a period of at least five years.

(c) When an insurance risk or any part thereof is placed with an ineligible unauthorized insurer pursuant to (b) above, the policy, binder or cover note shall be clearly stamped in boldface type with the following:

"All or part of the insurers participating in this risk have not been admitted to transact business in the State of New Jersey, nor have they been approved as surplus lines insurers by the Commissioner of Banking and Insurance of New Jersey. The placing of such insurance by a duly licensed surplus lines agent in this State, shall not be construed as approval of such insurer by the Commissioner of Banking and Insurance of the State of New Jersey and insurance coverage provided by such insurer is not protected by either the New Jersey Guaranty Fund or by the New Jersey Surplus Lines Insurance Guaranty Fund."

(d) Upon renewal of any placement pursuant to (b) above, a diligent effort shall be made to place the business with an authorized insurer or a surplus lines insurer in accordance with (a) above. If the business cannot be placed with an authorized insurer or a surplus lines insurer, the following conditions shall be met at least five business days prior to the effective date of the renewal policy:

1. The surplus lines agent shall in accordance with N.J.A.C. 11:1-33.9(b) 1, complete forms SLPS-6-Cert1 and SLPS-8-AFF3, prior to each renewal;
2. The most recent certified annual statement of the insurer's financial condition shall be filed with the SLEO; and
3. The policy shall be stamped clearly in boldface type with the filing "All or part of the insurers participating in this risk have not been admitted to transact business in the State of New Jersey, nor have they been approved as a surplus lines insurer by the Commissioner of Banking and Insurance of New Jersey. The placing of such insurance by a duly licensed surplus lines agent in this State, shall not be construed as approval of such insurer by the

Commissioner of Banking and Insurance of the State of New Jersey and insurance coverage provided by such insurer is not protected by either the New Jersey Insurance Guaranty Fund or by the New Jersey Surplus Lines Guaranty Fund."

(e) The New Jersey Surplus Lines Insurance Guaranty Fund Act, N.J.S.A. 17:22-6.70 et seq., does not provide protection for New Jersey insureds who are insured by policies procured from ineligible unauthorized insurers as described in (b) and (c) above. Therefore, no Guaranty Fund surcharge shall be charged or added to premiums related to these policies.

(f) A surplus lines agent may receive a commission for his or her services rendered on behalf of an ineligible unauthorized insurer, pursuant to insurance placements which conform to (b) and (c) above.

#### 11:1-33.9 Penalties

Failure to comply with the provisions of this subchapter shall subject producers and surplus lines agents to penalties as provided in N.J.S.A. 17:22-6.61 and 17:22A-17.

APPENDIX

EXHIBIT A

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

Property Casualty Office  
PO Box 325, Trenton, NJ 08625-0325

SURPLUS LINES POLICY FORM FILING QUESTIONNAIRE

The following information must be completed and this questionnaire attached to the front of each surplus lines policy form or endorsement submitted to the Department for approval pursuant to N.J.A.C. 11:1-33.4.

1. Name, address and the phone number of the surplus lines agent.

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2. Policy or Endorsement Name \_\_\_\_\_

3. Form #/Edition \_\_\_\_\_

4. To the best of your knowledge, has this policy or endorsement been approved by the Department for use by admitted companies with non-special risk?

YES \_\_\_\_\_ NO \_\_\_\_\_

5. Will this policy or endorsement be used solely with special risks pursuant to N.J.S.A. 17:29AA-3(k), except risks that are special solely because the premium is \$10,000 or greater?

YES \_\_\_\_\_ NO \_\_\_\_\_

Note: if the answer to either 4 or 5 is yes, you do not need approval from the Department, nor do you have to complete or file this questionnaire and the accompanying policy form or endorsement.

6. (a) To the best of your knowledge, has this policy form or endorsement been disapproved by the Department for use by admitted companies with non-special risks?

YES \_\_\_\_\_ NO \_\_\_\_\_

- (b) If yes, explain in detail how this form differs from policies or endorsements disapproved by the Department for use by admitted insurers with non-special risks.

7. Approval is being requested for what type of risks?

\_\_\_\_\_ A Particular Subject of Insurance single risk (provide details).  
\_\_\_\_\_ Risks of a Particular Class (provide details).  
\_\_\_\_\_ All Risks

Is this form a "modification" of an approved form?

YES \_\_\_\_\_ NO \_\_\_\_\_

8. Attach a statement by the surplus lines agent or insurer demonstrating that:

- (a) The modification(s) is reasonable, giving consideration to past and prospective loss experience of the risk or risks to be insured and modification facilitates the availability of coverage for such risk or risks, which coverage

- would otherwise not be available at a reasonable cost; or
- (b) The modification renders the form unique and designed for use with respect to a particular subject of insurance (single insured).

9. If approval is being requested to use the policy or endorsement with a single insured, attach a letter from the insured stating that:

- (a) The insured has been informed of the provisions that are different from the policies approved by the Department for use by admitted insurers and
- (b) The insured is willing to accept these differences.

10. CERTIFIED STATEMENT OF FILER:

\_\_\_\_\_ hereby certifies as follows:

- (a) I am the \_\_\_\_\_ of \_\_\_\_\_  
(Name of Surplus Lines Agent) (Name of Filer)
- (b) I am personally familiar with the contents of this filing.
- (c) The attached filing complies with all statutory and regulatory requirements and the information it contains is true and accurate.
- (d) I certify that the foregoing statements made by me are true and that the New Jersey Department of Banking and Insurance may rely upon them in its review of the filing.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)



EXHIBIT B

Form No. SLPS-6-CERT1

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Transaction #

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE  
SURPLUS LINES EXAMINING OFFICE  
PO BOX 325 Trenton, New Jersey 08625-0325

CERTIFICATION OF EFFORT TO PLACE RISK WITH AUTHORIZED INSURER

This certification shall be submitted by the originating producer with the surplus lines agent within 30 business days after the effectuation of any surplus lines insurance. The original of the certification must be maintained in the files of the surplus lines agent and a copy in the files of the producer and both must be available for inspection by the Commissioner for a period of at least five years.

\_\_\_\_\_  
(Name of insured)

\_\_\_\_\_  
(Address of insured)

\_\_\_\_\_  
(Location of Property or Risk)

\_\_\_\_\_  
(Insurance Coverage: Description and Amount)

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\_\_\_\_\_  
(Originating producer--Corporate or partnership)

\_\_\_\_\_  
(Originating producer--Individual name and/or Title)

\_\_\_\_\_  
(Originating producer--Complete Address)

The above hereby certifies that he/she is duly licensed as an insurance producer under the laws of New Jersey, and that: On or about \_\_\_\_\_, 200\_, I was engaged by the insured named herein to procure insurance of the kind described herein and in the amount shown. There is no renewal offer/quote or existing coverage for this risk in the admitted market. I have made a diligent effort first to place this coverage with authorized insurers, each of which is authorized in New Jersey to write insurance of the kind requested and is an insurer that I had a good faith reason to believe might consider writing the type of coverage described herein. The following insurers are among those that declined to accept all or any part of the risk.

Insurer	Representative	Telephone No.	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the statements are willfully false, I am subject to civil and criminal penalties.

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(Date)

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(Signature)

EXHIBIT C

Form No. SLPS-8-AFF3

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Transaction #

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE  
THE SURPLUS LINES EXAMINING OFFICE  
PO Box 325 TRENTON, NEW JERSEY 08625-325

SUPPLEMENTAL CERTIFICATION BY SURPLUS LINES AGENT FOR PROCUREMENT OF INSURANCE  
FROM INELIGIBLE UNAUTHORIZED INSURER

Name of Insured \_\_\_\_\_

\_\_\_\_\_  
(Street Address) (City or Town) (State) (Zip Code)

Location of Risk \_\_\_\_\_

\_\_\_\_\_  
(Street Address) (City or Town) (State) (Zip Code)

Insurance Coverage \_\_\_\_\_  
(Type of Coverage) (Policy Limits)

\_\_\_\_\_  
(Name of Surplus Lines Agent Representing Insured Above)

\_\_\_\_\_  
(Title of Representative for Corporation or Partnership)

\_\_\_\_\_  
(Name of Business, Corporation or Partnership)

\_\_\_\_\_  
(Street Address) (City or Town) (State) (Zip Code)

The above named individual is duly licensed as an insurance producer with  
surplus lines authority pursuant to N.J.S.A. 17:22-1 et seq.

Name of Ineligible Unauthorized Insurer that business was placed with:

	NAIC #	ISI #
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____

Attach additional listings if needed.

The named ineligible unauthorized insurer has deposited with the Commissioner in accordance with N.J.A.C. 11:2-

32, securities in the amount acceptable to the Commissioner, which are held by the Commissioner for the benefit of New Jersey policyholders; and

(I) (We) have procured from such ineligible unauthorized insurer and filed with the Commissioner a certified copy of its current annual statement of financial condition in accordance with N.J.S.A. 17:22-6.45(h).

(I) (We) do not know of this coverage(s) being offered by companies I represent or by other companies in the admitted market.

(I) (We) certify that the foregoing statements made by me are true. I am aware that if any of the statements are willfully false, I am subject to civil and criminal penalties.

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Name of Surplus Lines Agent

By: \_\_\_\_\_  
(Signature)